

DOCKET FILE COPY ORIGINAL

DOCKET FILE COPY ORIGINAL

ORIGINAL
RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 19 1993

In the Matter of)
Amendment of § 73.202(b) Table of)
FM Broadcast Stations,)
(Frederiksted, Virgin Islands))

MM Docket No. 92-245

RM-8026

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS

El Mundo Broadcasting Corporation, licensee of WKAQ-FM, San Juan, P.R. ("WKAQ"); Estereotempo, Inc., licensee of WIOC-FM, Ponce, P.R. ("WIOC"); Radio Redentor, Inc., licensee of WERR-FM, Utado, P.R. ("WERR"); and Aurio Matos, licensee of WNNV-FM, Aguada, P.R. ("WNNV") collectively as Joint Commenters, respectfully submit their Reply Comments and state as follows:

1. In a Notice of Proposed Rule Making, DA 92-1368, released on November 12, 1992, the Commission sought comment on the proposal of Jose J. Arzuaga ("Arzuaga") to allocate Channel 298A to Frederiksted, V.I. as that community's second local service. The Joint Commenters counterproposed by suggesting Channel 282A be allotted to Frederiksted, V.I., instead. The revised Table of Allotments and other proposed facility changes, suggested by the Joint Commenters in their counterproposal would:

- provide first local service to the city of Gurabo, P.R.;
- allow WNNV to upgrade from a Class A to a Class B1 facility and improve the first local service that it provides to the city of Aguada, P.R.; and
- encompass 2 million more people within the 1.0 mV/m contours of the four Joint Commenters' stations.

2. In addition to the Joint Commenters counterproposal, comments opposing the Arzuaga proposal were filed by St. Croix

No. of Copies rec'd 24
List A B C D E

Wireless Co., Inc., permittee of FM Station WAVI, Christiansted, Virgin Islands ("WAVI") and Arzuaga filed his expression of continued interest in applying for the new Frederiksted, V.I. facility if a new channel is allotted. Since the Joint Commenters counterproposal involves three pending dockets, they are filing reply comments in each of those proceedings. The Comments filed by WAVI are not relevant to the Joint Commenters counterproposal. WAVI questions whether or not the new allocation to Frederiksted, V.I., should be made at all. The Joint Commenters counterproposal can be implemented whether or not the new allocation is made, as long as the channel allocated is Channel 282A. The most preferential arrangement of allotments will result in allocating Channel 282A to Frederiksted, V.I. instead of Channel 298A.

WVIS's Comments are not relevant to the rule making proceeding

3. In MM Docket No. 92-244, Virgin Islands Stereo Communications, licensee of WVIS-FM, Frederiksted, V.I. ("WVIS") advanced three arguments in opposition to the proposal advanced by WVN¹X. ^{1/} None of the arguments can be addressed in a rule making context. First, WVIS claims that WVN¹X cannot provide its city of license with a 70 dBu signal from its presently authorized site. ^{2/} Whether this is true or not, all the Joint Commenters propose is an

^{1/} The NPRM, DA 92-1370, released November 10, 1992, upon which MM Docket 92-244 is premised, sought comment on the proposal of Calypso Communications, Inc, the permittee of WVN¹X-FM to amend the Table of Allotments by substituting Channel 267B for its presently authorized Channel 246B at Charlotte Amalie, V.I.

^{2/} WVN¹X proposed using its presently authorized construction permit site for the new channel, as did the Joint Commenters.

alternative channel. The burden of proof of city grade coverage falls on the petitioner. If the FCC finds city grade coverage would be provided by the WVNIX proposal, then the petitioner can move to the alternative channel proposed by the Joint Commenters. If the Commission finds that the WVNIX proposal will not provide city grade coverage to Charlotte Amalie, then its request should be denied. ^{3/} Since the Joint Commenters are providing an equivalent channel, proving or disproving the WVIS allegation is not the responsibility of the Joint Commenters. 4. WVIS argues that the Commission erred in allotting Channel 246B to Charlotte Amalie in the first place because the Virgin Islands are already adequately served and the economic base there cannot support another radio station. ^{4/} Obviously, the present permittee of WVNIX believes it can succeed in operating a successful facility and has taken the proper steps to acquire the authorization from the FCC.

5. At the same time WVIS is arguing that the economy of the Virgin Islands cannot support another station and that its operation is "barely able to meet its basic operating expenses", WVIS requests that the Commission allocate Channel 267B to Charlotte Amalie, V.I. and open a filing window to allow it an

^{3/} If the WVNIX request is denied, then WIYC, Charlotte Amalie can move to Channel 267B as the Joint Commenters proposed, which would allow WDCM, Cruz Bay to move to Channel 298B and provide first local service to that community. (See ¶ 7-8, infra.)

^{4/} Specifically WVIS states that "because of the limited economic base in the islands, as compared with the large number of stations which operate there, WVIS is barely able to meet its operating expenses." Comments at p. 3-4.

opportunity to file an application for that channel. The comments of WVIS are contradictory and inconsistent. As a result, its comments warrant no further consideration.

6. In any event, the Joint Commenters counterproposal is comparatively superior to the WVIS proposal. The Commission's well established allotment priorities are, in order of importance:

1. First full-time aural service;
2. Second full-time aural service;
3. First local service;
4. Other public interest matters.

Revision of FM Assignment Policies and Procedures, 90 F.C.C. 2d 88, 91 (1982). The WVIS proposal will provide seventh local service to Charlotte Amalie, which advances only the least important allotment priority. The Joint Commenters counterproposal will provide first local service to a significant community, Gurabo, P.R. which advances a priority of far greater importance. In addition, the Joint Commenters counterproposal will produce the ancillary benefits of a channel upgrade for the facility that provides the only local service to Aguada, P.R. and new 1.0 mV/m service to over 2 million people. These "other public interest" benefits are far superior to the "benefit" of a sixth local service to Charlotte Amalie, V.I.

The WDCM Counterproposal in MM Docket No. 92-244 ^{5/}

7. WDCM proposes that Channel 267B be substituted for its

^{5/} Paradise Broadcasting Corporation is the permittee of FM Station WDCM, Cruz Bay, Virgin Islands.

presently authorized Channel 222B allotment at Cruz Bay, V.I. In support of its request, WDCM that at its present site and with its presently allocated frequency, its operation "...would create harmful electrical interference with allotments in the British Virgin Islands." If WDCM is not allowed to move to a different channel, then Cruz Bay, V.I. would be deprived of its first local service. ^{6/} WDCM claims that its proposed channel change is the equivalent of providing first local service to Cruz Bay, V.I., advancing one of the Commission's three most important allotment priorities. WVNIX's proposal would provide Charlotte Amalie, V.I. with a sixth local service, which WDCM argues only advances the Commission's allotment priority of least significance. Thus, WDCM concludes, its counterproposal should be adopted and Channel 267B should be allotted to Cruz Bay, V.I. instead of Charlotte Amalie, V.I.

8. Channel 267B is the same channel that WVNIX originally proposed to substitute for its presently authorized Channel 246B. The Joint Commenters proposed Channel 298B instead of Channel 267B for WVNIX. Channel 298B will also work at Cruz Bay, V.I.

The Joint Commenters proposal is the superior proposal

9. WVIS claims that it needs Channel 267B to provide seventh

^{6/} WDCM surmises that the Commission is aware of the fact that the Channel 222B allotment to Cruz Bay is unworkable because the FCC data base has proposed to delete that allotment and substitute it with Channel 224B. However, WDCM argues that operation on Channel 224B at Cruz Bay is precluded by British Virgin Islands interference as well. However, the engineering showing is inadequate to support its contentions.

local service to Charlotte Amalie. ^{7/} WDCM argues that it needs Channel 267B as an alternate channel to allow other changes to take place, which in turn will provide first local service to Cruz Bay, V.I., which it admits is only a Census Designated Place, and had a 1980 census population of less than 2,000 people. The Joint Commenters argue that they need Channel 267B as an alternate channel to allow other changes to take place, which in turn will provide first local service to a city with a 1990 census population of 9,199 and enhanced service to Aguada. Neither the WDCM nor the WVIS proposal can boast creating such a preferential allotment scheme, and in addition, the Joint Commenters proposal would allow either WDCM or WVNIX to operate on Channel 298B (rather than 267B) and thus avoid any British Virgin Islands interference.

10. Of the three proposed uses for Channel 267B in this docket, the Joint Commenters counterproposal of substituting Channel 267B for Channel 282B at Charlotte Amalie, V.I. and modifying WIYC's license accordingly, would result in the most preferential arrangement of allotments. Gurabo, P.R. would receive first service, Aguada would receive improved service from its only local service and 2 million more people would receive 1.0 mV/m coverage. Neither the WDCM nor the WVNIX proposal offers a better result. The Joint Commenters have also provided a channel (Channel 298B) which can be used by either WDCM or WVNIX, whichever the

^{7/} WVNIX proposes substituting Channel 267B for its present authority to provide sixth service to Charlotte Amalie, but that can be accomplished by allotting substituting Channel 298B (instead of 267B) for WVNIX's present allotment.

Commission decides is the better proposal.

Request for severance and proposed FNPRM in MM Docket No. 92-244

11. The Joint Commenters, in analyzing the various competing requests, came up with a solution that would resolve matters by affording WVNK and WDCM workable channels, and has informed the attorneys for WDCM and WVNK. It is not proper procedure for the Joint Commenters to suggest any further channel substitutions in reply comments, but the solution that was discovered would involved moving an existing facility in Christiansted, V.I. and allocating a different channel for a vacant allotment in Frederiksted, V.I. The Joint Commenters do not officially propose this, but merely offer it for informational purposes to the Commission and other parties in interest.

12. Based on the foregoing, the Joint Commenters request that the aspect of MM Docket 92-244 involving WVNK and WDCM be severed so that further evaluation of their competing proposals can be made, and solutions that would allow both facilities to have full Class B channels clear of British Virgin Island interference and in compliance with domestic spacing rules can be fully explored. By issuing a Further Notice of Proposed Rule Making dealing specifically with the proposals of WDCM and WVNK, the relative merit of their cases can be weighed and solutions can be proposed (such as the solution the Joint Commenters have made them aware of). The Joint Commenters also request that the Comments filed by


WVIS be dismissed. ^{8/} In the meantime, the Joint Commenters proposal can be implemented, and the improved service it will provide can be achieved more expeditiously, including (if the Commission deems it appropriate) allocation of a new channel to Frederiksted, V.I. to provide that community with its second local service.

1901 L Street, N.W.
Suite 200
Washington, D.C. 20036

(202) 659-4401

January 19, 1993

Respectfully submitted,



Scott Cinnamon
Attorney for
Joint Commenters

^{8/} The request of WVIS to allocate Channel 267B to Charlotte Amalie, V.I. as that community's seventh local service is comparatively inferior to the Joint Commenters request and therefore should not be considered.

CERTIFICATE OF SERVICE

I, Scott Cinnamon, do hereby certify that true copies of the foregoing were delivered this 19th day of January, 1993, as shown, or mailed, first-class, postage prepaid, to the following:

Michael C. Ruger, Chief
Allocations Branch
Mass Media Bureau
2025 M Street, N.W., Room 8322
Stop Code 1800 D5
Washington, D.C. 20554 *

Jose J. Arzuaga
P.O. Box 980
Quebradillas, P.R. 00742
Petitioner

Stephen Diaz Gavin, Esq.
Besozzi & Gavin
1901 L Street, N.W.
Suite 200
Washington, D.C. 20036
Counsel for WIYC-FM **

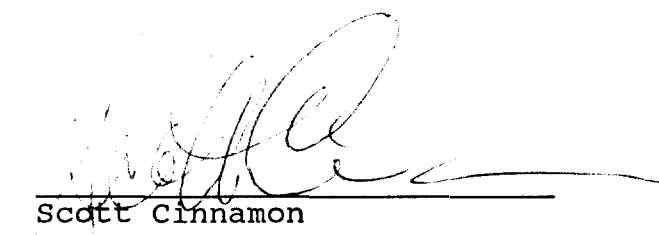
John P. Bankson, Jr., Esq.
Hopkins & Sutter
888 16th Street, N.W.
Washington, D.C. 20006
Counsel for WVOZ-FM

and

Sr. Pedro Roman Collazo
International B/ng. Corp.
Pent House Darlington
Rio Piedras, PR 00925
Licensee of WVOZ-FM

John T. Galanses, President
St. Croix Wireless Co., Inc..
P.O. Box 25016
St. Croix, Virgin Islands 00824
Counsel for WVIS-FM

*-via FCC Mailroom
**-Hand delivered



Scott Cinnamon